

§ 214.12

36 CFR Ch. II (7–1–14 Edition)

§ 214.12 Responsive statement and reply.

(a) *Responsive statement.* The Responsible Official shall prepare a responsive statement addressing the factual and legal allegations in the appeal. The responsive statement and any supporting documentation shall be filed with the Appeal Deciding Officer within 20 days of receipt of the appeal or the unsuccessful conclusion of mediation conducted pursuant to 36 CFR part 222, subpart B, whichever is later.

(b) *Reply.* Within 10 days of receipt of the responsive statement, the appellant and intervenors, if any, may file a reply with the Appeal Deciding Officer addressing the contentions in the responsive statement.

§ 214.13 Stays.

(a) *Implementation.* An appealable decision shall be implemented unless an authorized stay is granted under § 214.13(b) or an automatic stay goes into effect under § 214.13(c).

(b) *Authorized stays.* Except where a stay automatically goes into effect under § 214.13(c), the Appeal Deciding Officer may grant a written request to stay the decision that is the subject of an appeal under this part.

(1) *Stay request.* To obtain a stay, an appellant must include a request for a stay in the appeal pursuant to § 214.8(b)(2) and a statement explaining the need for a stay. The statement must include, at a minimum:

(i) A description of the adverse impact on the appellant if a stay is not granted;

(ii) A description of the adverse impact on National Forest System lands and resources if a stay is not granted; or

(iii) An explanation as to how a meaningful decision on the merits of the appeal could not be achieved if a stay is not granted.

(2) *Stay response.* The Responsible Official may support, oppose, or take no position in the responsive statement regarding the appellant's stay request. Intervenors may support, oppose, or take no position in the intervention request regarding the appellant's stay request.

(3) *Stay decision.* The Appeal Deciding Officer shall issue a decision granting

or denying a stay request within 10 days after a responsive statement or an intervention request is filed, whichever is later. The stay decision shall be in writing and shall briefly explain the basis for granting or denying the stay request.

(c) *Automatic stays.* The following decisions are automatically stayed once an appeal is filed by a holder, operator, or solicited applicant:

(1) Decisions to issue a written authorization pursuant to a prospectus;

(2) Decisions to recalculate revenue-based land use fees for a special use authorization pursuant to an audit issued after June 5, 2013; and

(3) Decisions to cancel or suspend a term grazing permit subject to mediation under 36 CFR 222.20 and for which mediation is requested in accordance with that provision.

(d) *Stay duration.* Authorized stays and automatic stays under § 214.13(c)(1) and (c)(2) shall remain in effect until a final administrative decision is issued in the appeal, unless they are modified or lifted in accordance with § 214.13(e). Automatic stays under § 214.13(c)(3) shall remain in effect for the duration of the mediation period as provided in 36 CFR 222.22.

(e) *Modification or lifting of a stay.* The Appeal Deciding Officer or a Discretionary Reviewing Officer may modify or lift an authorized stay based upon a written request by a party to the appeal who demonstrates that the circumstances have changed since the stay was granted and that it is unduly burdensome or unfair to maintain the stay.

§ 214.14 Conduct of an appeal.

(a) *Evidence of timely filing.* The Appeal Deciding Officer shall determine the timeliness of an appeal by the following indicators:

(1) The date of the U.S. Postal Service postmark for an appeal received before the close of the fifth business day after the appeal filing date;

(2) The electronically generated posted date and time for email and facsimiles;

(3) The shipping date for delivery by private carrier for an appeal received before the close of the fifth business day after the appeal filing date; or